

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY TENNESSEE
TWENTIETH JUDICIAL DISTRICT

STATE OF TENNESSEE, *ex rel.* ROBERT
E. COOPER, JR., ATTORNEY GENERAL,

Plaintiff,

v.

CONSUMER DEPOT, LLC, and MARTIN
FIKE, *et al.*

Defendants.

No. 06C-1093

ORDER

This matter came to be heard on the 11th day of December 2009 upon the Plaintiffs' Second Motion to Strike Defendants Rebuttal Filings which consists of various pleadings untimely filed by the Defendants regarding the August 6 and 7th, 2009 summary judgment argument hearing dates. This Order also addresses the Plaintiff's first Motion to Strike filed August 6, 2009 that was taken under advisement by this Court.

The Court has considered the Memorandum in Support of Motion to Strike, the accompanying exhibits, the Defendants' Response to Plaintiff's Motion to Strike, and the oral arguments of counsel for the parties.

This is a civil law enforcement proceeding filed by the State of Tennessee under the Tennessee Consumer Protection Act of 1977, alleging all Defendants engaged in false advertising and various other unfair and deceptive business acts and practices in connection with their sale and advertising of computers and other goods to the public.

At issue are three filings by Defendants. The first was the August 5, 2009 Response of Defendants in Rebuttal to State of Tennessee's Reply in Support of its

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RICHARD R. ROOKER, CLERK

[Signature]

Motion for Summary Judgment (this filing consisted of 261 pages) This filing was objected to by Plaintiff in its first Motion to Strike filed August 6, 2009, which was taken under advisement by the Court.

The second group of untimely filings by the Defendants occurred during the oral argument of the Plaintiff's Summary Judgment. No attempt was made by the Defendants to authenticate the documents nor were the items marked as exhibits by the Trial Court.¹

The third set of untimely filings by the Defendants occurred on August 31, 2009 and consisted of approximately 200 pages of unauthenticated material, including a 31 page memorandum, and attachments that included affidavits of Defendants Martin and Carol Fike. The affidavit of Martin Fike had 144 pages of documents attached to it as exhibits and the affidavit of Carol Fike had 22 pages of exhibits attached to it.

All of the foregoing was filed by the Defendants without leave of the Court. None of the pleadings and their attachments are authorized under the Tennessee Rules of Civil Procedure.²

The civil complaint in this matter was filed May 2, 2006. Since the initial filing this Court has granted the State of Tennessee's motions to compel discovery on four occasions.³ After the third Order to Compel was granted to the Plaintiff⁴ the Defendants

¹ The Plaintiff correctly notes that the Exhibits offered to the Court during the Summary Judgment hearing are not reflected upon the court's docket.

² As mentioned above, none of the documents offered by the Defendants were accepted by the Court as evidence. If the Court had accepted the first two late pleadings and exhibits the Plaintiff had requested that the Court consider its late filed documents from the local Better Business Bureau.

³ "Order Regarding Plaintiff's Motion to compel Responses to Discovery" entered December 18, 2006; "Order Granting Plaintiff State of Tennessee's Motion to Compel Responses From all Defendants to Plaintiff's Discover" entered October 17, 2007; "Order Granting Plaintiff State of Tennessee's Motion To Compel Responses to Interrogatories 2, 24, 30-32, 34 and 36-40 of Plaintiff's Third Set of Interrogatories to Defendants" entered January 14, 2008; and "Order Granting Plaintiff State of Tennessee's Motion to Compel Rule 30.02(6) Deposition of Consumer Depot and Resetting Summary Judgment Hearing to May 7, 2009" entered April 27, 2009.

⁴ By Order entered January 14, 2008.

filed a Motion for a Protective Order. In its Order denying the Defendants' request for a Protective Order the Court urged "...all Defendants to make a meaningful effort to provide complete, truthful, responsive and verified answers to all of Plaintiff's discovery" (entered March 3, 2008).

The present Motion for Summary Judgment was filed by the State of Tennessee on February 10, 2009 and amended the following day, February 11, 2009. The Defendants' Response to the Motion for Summary Judgment was filed April 23, 2009, and the State's Reply was filed July 20, 2009. The hearing of the Plaintiff's Motion for Summary Judgment was originally set to be heard March 20, 2009. Defendants moved the Court for (and were granted) a continuance of the Plaintiff's Summary Judgment hearing from March 23, 2009 until April 23, 2009. This hearing date was again continued (until May 7, 2009) due to Defendant Consumer Depot's lack of cooperation when it did not make itself available for an oral deposition, resulting in an Order to Compel. The May 7, 2009 hearing date on the Plaintiff's Motion for Summary Judgment was continued at the request of the State of Tennessee when Plaintiff's attorneys' computer and network crashed, purportedly following two malicious worm viruses introduced from the opening of Defendants' discovery responses on a disc. The next hearing date on the Plaintiff's Motion for Summary Judgment was scheduled for July 28, 2009 and at the Defendants' request was continued until August 6, 2009.

The procedural history of this case reflects a persistent effort by the Defendants to protract these proceedings. Discovery directed to the Defendants has been difficult and delayed. This Court is of the opinion that the foregoing three filings demonstrate a continued disregard of the rules and laws of this Court and this State. Defendants did not

ask permission to file any late rebuttal response(s), nor did they ask for a continuance of the Summary Judgment argument on August 6 and 7, 2009. Additionally, Defendants have failed to demonstrate how any of the late filed rebuttal pleadings or exhibits are necessary because of evidence newly discovered by them.

Based upon the foregoing, the Plaintiff's motion to strike the three sets of filings by the Defendants (as described above) is **GRANTED**.

The foregoing is hereby **ORDERED**.

This 21 day of December, 2009.

A handwritten signature in black ink, appearing to be 'AMC', written over a horizontal line.

Amanda McClendon, JUDGE

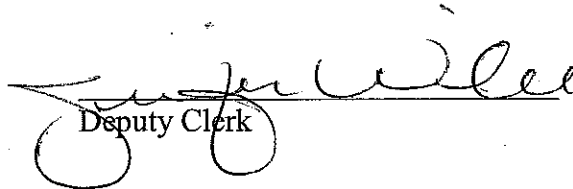
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order has been mailed U.S. Postal to the following persons:

Olha Rybakoff
2nd Floor, CHB
425 5th Ave. North
Nashville, TN 37201
Attorney for Plaintiff

Raymond Prince
150 2nd Ave. North
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Nashville, TN 37201
Attorney for Defendant

This 4 day of January, 2010.


Deputy Clerk

Defendants' Exhibits

Introduced During Summary Judgment Hearing

August 6 – 7, 2009

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2010 JAN -4 AM 8:05
RICHARD R. ROOKER, CLERK

10/15/10

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